

Immigration and
Refugee Board of Canada
Refugee Protection Division



Commission de l'immigration et
du statut de réfugié du Canada
Section de la protection des réfugiés

This is Exhibit "D" referred to in the
affidavit of ASIF KHAN KHALIL
sworn before me on this 2ND day
of MARCH 2012.

RPD File No. / N° de dossier de SPR: VB0-03118

Private Proceeding / Huis clos

Bashir A. Khan

Reasons and Decision – Motifs et décision

Claimant(s)	Asif Khan KHALIL	Demandeur(e)(s) d'asile
Date(s) of Hearing	08 December 2011	Date(s) de l'audience
Place of Hearing	Heard by videoconference in Winnipeg, MB and Vancouver, BC	Lieu de l'audience
Date of Decision	23 January 2012	Date de la décision
Panel	Colleen Zuk	Tribunal
Counsel for the Claimant(s)	Bashir Khan Barrister and Solicitor	Conseil(s) du / de la / des demandeur(e)(s) d'asile
Tribunal Officer	N/A	Agent(e) des tribunaux
Designated Representative(s)	N/A	Représentant(e)(s) Désigné(e)(s)
Counsel for the Minister	N/A	Conseil du ministre

IRB Representative
Représentant de la CISR

REASONS FOR DECISION

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[1] Asif Khan KHALIL, (the "claimant"), is a citizen of Pakistan.¹ He claims refugee protection pursuant to ss. 96 and 97(1) of the *Immigration and Refugee Protection Act* (the "Act").²

DETERMINATION

[2] I find that the claimant is not a Convention refugee, or a person in need of protection.

IDENTITY

[3] The claimant's identity as a national of Pakistan is established by his testimony and the supporting documentation filed: passport.³ He is a 19 year old single man of Pashtun ethnicity who plays competitive squash internationally. His parents, two sisters and one brother live in Peshawar, where he was born and raised. He speaks Pashto and Urdu.

ALLEGATIONS⁴

[4] In 2003 the claimant was selected to play squash at the international level and he played at the British Junior Open that year. At the time, Talibanization was in intense increase in the now North West Frontier Province (NWFP), where the claimant was from. The game of squash was a game played since the birth of Pakistan, due to colonization. The claimant personally encountered and received many threats because he was playing the game of the enemy (British).

¹ Exhibit 2, Copy of pages of the claimant's passport provided by Canada Immigration. Canada Immigration has not determined the authenticity of the passport.

² *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

³ Exhibit 2.

⁴ Exhibit 1, Personal Information Form completed by the claimant – summary of.

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[5] The fundamentalists believe that the region belongs to one nation (Pashtuns) and they do not accept any borders; the tribal people have taken control of the area and the Pakistani government is not in control at all in these areas. Due to recent political developments in the area, these people have developed a special hatred towards people who were imitating the western values, especially for those who play squash, an "English" game.

[6] These attitudes have spilled over into the area near where the claimant comes from, which is close to Peshawar city. The local people are responsible for their own security. Their area has been surrounded by Mosques where the Taliban usually study and those mosques belong to the Taliban supporters. Fanatics would stop people from wearing clothes such as t-shirts, shorts or jeans by issuing the wearers of such clothing warnings.

[7] The claimant participated in squash tournaments and travelled to different countries over the past few years. Due to recent regional politics, the country conditions were getting worse on a day by day basis. Squash players could not play with peace of mind because they were mentally disturbed and physically tortured by the Taliban. Taliban would tease them on the streets daily for playing the game of the enemy.

[8] Aside from several other trips to various countries, the claimant was in London, U.K. from August 21 to September 4, 2008, and then returned to Pakistan. He went to London again from June 24 to December 1, 2009 to play squash.

[9] The Taliban threatened the claimant's coach, Nasir Hussain, who was famous as he was also training Pakistan's number one female champion, Ms. Maria Toor. In July 2009, the Taliban threatened coach Nasir, telling him not to train them anymore, or they would kill his and the players' families. They accused all squash players of anti local values and of being agents of the British.

[10] In September 2009, the Taliban came to his parents' home and asked of his whereabouts. The claimant's father told them he was in England playing squash and the Taliban accused him of working for the English as a spy and not as a player. The Taliban did not accept the

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claimant's father's explanation and told him that if the claimant ever returned to Pakistan they would kill him.

[11] On October 16, 2009, a suicide bomber attacked a police investigation bureau in the Sawati Pathak area, a few blocks from the claimant's house and close to a Pakistani army garrison. Police officials initially said there were two bombers. The bomb killed two of coach Nasir Hussein's sisters and his father. Ms. Maria Toor was accused of wearing men's clothing and the Taliban threatened her to wear a burka.

[12] Also in 2009 most foreign tourists were asked to leave the city. Since then cricketers and squash players did not host any events, big or small. Inter-provincial games were marred by suicide blasts during the closing ceremony in 2009 and another blast hit the ISI headquarters. As a result, all games were postponed. In the winter of 2009, the most powerful blast in the city occurred near the most visited army stadium. Previously the claimant had gone every morning to the army stadium for his warm up and running. Because of this blast the claimant decided not to go there any more. Later, the U.S. consulate in Peshawar was also closed.

[13] The claimant did not take the threats that were made against him in September 2009 seriously and returned to Pakistan in December 2009 to continue playing squash. One day when he was returning from the squash club a few Taliban members were standing in his way. They physically attacked the claimant with a knife and wounded his right hand. They did this because they thought the claimant played squash with his right hand but luckily he was a left-handed player. He continued to play despite his injuries and threats.

[14] On April 4, 2010, the claimant left Peshawar for Islamabad, and then went to Thailand to play squash. He kept in touch with his father who told him not to come back to Pakistan as it was dangerous for his life. He returned to London from April 13 to July 26, 2010 to play squash. While in the U.K. his father told him not to come home because the Taliban were still coming every week to his house and asking his parents when he would be back. They beat his parents two weeks prior to him signing his PIF (September 24, 2010) and his father was hospitalized due to an injury to his head.

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[15] While in the U.K., he applied for a Canadian work visa, which he obtained and which was valid from July 26 to August 28, 2010. He then went to the United States on a valid visa for a day of squash tournaments. He arrived in Canada on July 27, 2010 in Toronto, went to Winnipeg on August 4, 2010, and claimed refugee protection on August 31, 2010 in Winnipeg. He advances his claim under section 96, membership in a particular social group, as well as section 97, risk to life. He does not advance a claim of torture if returned to Pakistan. He fears that if he is returned to Pakistan, because he is and has been a professional squash player, he will be targeted all over Pakistan by the Taliban for being a Western spy and negatively influencing other young Pashtu. He also believes that he cannot get protection from the state because Pakistan has become a safe haven for terrorists.

ANALYSIS

[16] The determinative issue is credibility, including subjective fear. I accept that the claimant is an international squash player whose activities have been supported by the Pakistani military.

[17] The claimant's port of entry notes indicate threats to him via his parents, in relation to his squash playing in 2010.⁵ His PIF indicates that threats against him and his family for his squash playing started in September 2009.⁶ According to testimony, the Taliban, or Al-Qaida as he mixed the two groups, did not approach his parents until February 23 or 24, 2010. The inconsistency between his PIF and testimony was put to the claimant who responded that he was in England and so he did not take the threats seriously until February 2010.

[18] I do not find this explanation satisfactory. The question was straightforward: when did the threats to his parents start? Whether or not he took the threats seriously is immaterial to the answer. His explanation for the inconsistency leads me to find that his allegations of the Taliban looking for him at his parents' home in 2009 and threatening to kill him if he returned to Pakistan are not credible.

⁵ Exhibit 2, Form IMM 5611 page 10 of 10, answer to question 42.

⁶ Exhibit 1, narrative para 7.

[19] During the hearing new evidence came out. The claimant testified that he was called by the Taliban on his cell phone in 2009 while in Karachi at a squash tournament and was threatened. They wanted money. He did not take the threat seriously and returned to Peshawar to continue playing squash.

[20] I do not find credible that the claimant received a threatening phone call from the Taliban while in Karachi in 2009. Had this been the case, I would have expected the information to appear in his PIF, or even mention of him being threatened personally in 2009 in his port of entry notes. He had competent counsel assist him in the preparation of his PIF.

[21] The claimant alleges that he was attacked by the Taliban in February 2010 and they injured his right hand; the incident of which is referred to in his PIF. He provided a doctor's note, which is not dated, attesting to the injury.⁷ There is no mention in the letter about how the injury was sustained. Notably, his port of entry notes make no mention of him being physically attacked by the Taliban. According to testimony, he was approached by two Taliban on a bicycle in front of the squash court. The area was a military area. When they cut his finger he was shocked and fell on the floor and some military people came to help him. He did not tell the military people that he thought his assailants were Taliban or Al-Qaida. He did not tell the doctor treating his injury that he thought his assailants were Al-Qaida or Taliban.

[22] When asked for an explanation as to why he did not inform anyone that he had been attacked by the Taliban or Al-Qaida, he responded that the assailants threatened his parents and that they kept telling his parents that [they] did this to [their] cousin. After stating 'cousin', he self-corrected and said 'son'. The claimant testified that he was scared of telling the 'cops' and moved everywhere. He added that while he was in the hospital they [the Taliban] told his parents that if they told anyone they would kill them [the parents].

[23] As the information about the assailants who allegedly assaulted the claimant outside the squash courts had visited and threatened the claimant's parents while he was in the hospital was new information, he was asked to confirm if he was telling the panel that his parents were visited by the Al-Qaida, in regards to the alleged assault. His response was that he did not know, and

⁷ Exhibit 8, Item 1.

then he added maybe. He further declared that he was just telling the panel the truth and he was nervous; the panel reminded him of every single moment when it passed.

[24] He was also asked to explain his testimony where he said the assailants threatened his parents and referred to a cousin. He responded that he said cousin first, and then son. He further explained that he did not understand what he was going to say and that he 'told something wrong'.

[25] In later testimony, when canvassing on his ability to live somewhere else in Pakistan and obtain protection, he responded that he could not get protection because he had already asked for protection telling the authorities that he had been threatened because of his squash playing. This testimony was a change from previous testimony and also does not appear in his PIF.

[26] Documentary evidence indicates that in 2009 and 2010, the government implemented measures to protect the population. The military engaged in active combat operations to clear militants or security operations to restore security in Khyber, Bajaur, Kurram, Mohmand, Orakzai, and South Waziristan agencies in the The Federally Administered Tribal Areas (FATA), and Swat and the Malakand Division in KP. The government also took actions to shut down and weaken terrorist ties around the country and prevent recruitment into militant organizations. Police arrested Karachi gang members and TTP commanders who provided logistical support to militants in the tribal areas. The government shifted 100,000 troops from the Indian frontier to spearhead a crackdown on the Taliban along the Afghanistan border. Police arrested would-be suicide bombers in major cities of the country, confiscating arms, suicide vests, and attack planning materials. The government continued to operate a center in Swat to rehabilitate and educate former child soldiers.⁸

[27] Had the claimant been in a military area near the squash court and had he been attacked by the Taliban or Al-Qaida, and then rescued by military people, then I would have expected him to have reported it to the military given their demonstrated interest in cracking down on the Taliban in the area. Had his parents been threatened by the Taliban or Al-Qaida because of him,

⁸ NDP, Item 2.1, United States (US). 8 April 2011. Department of State. "Pakistan." *Country Reports on Human Rights Practices for 2010*.

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while he was in the hospital, then I would have expected this information to appear in his PIF and I would have expected him to know concretely if they had been threatened, not maybe. Moreover, had the Taliban threatened the claimant's parents because of his squash playing and to kill the claimant, then I would not have expected him to say "cousin" when describing what was said in the threats, and then self-correct to say "son". This particular segment of testimony leads me to find the claimant is not credible that he or his parents were threatened because of his squash playing. On a balance of probabilities, I do not find credible that the claimant was attacked and had his hand injured by the Taliban or Al-Qaida in February 2010, or that his parents were threatened in relation to that assault or to the claimant's squash playing.

[28] Also in testimony, the claimant indicated that his parents were being visited and threatened by the Taliban, and the claimant's father had been beaten requiring stitches. According to testimony they beat his parents as soon as he left Pakistan, in February 2010. However, his port of entry notes indicate the beatings took place two weeks prior to when the claimant signed his declaration. The declaration was signed on August 31, 2010. Notably, there is no affidavit from the parents, nor is there a medical certificate in evidence documenting the claimant's father's head injury. Even though the claimant cites his parents being threatened on his behalf in both his port of entry notes and his PIF,⁹ given the inconsistencies in time frame of threats and omissions or additions in his evidence, on a balance of probabilities, I do not find credible the allegation that the claimant's parents have been threatened in 2010 because of his squash playing.

[29] Counsel for the claimant submits that the claimant's squash career has been supported and financed by the Pakistani military and that the Immigration Refugee Board (the "Board") should consider the claim under membership in a particular social group as well as political opinion. He recapped his view of the history of Pakistan, noting that since 1947 extremist groups believe that Pakistan should be a hard-line Islamist state and that there has been a holy civil war between the secularist visions against the creation of an Islamic state. He asserts that someone who is 17 or now 19 years old who is dressing in a Western style or playing and winning a Western sport becomes a model to other young Pashtu. He submits that it is not necessarily that they want to kill the claimant, but that this quest for an Islamist state has been something

⁹ Exhibit 1, narrative para 15.

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that has happened since before the claimant was born. Because Pakistan is a country suffering from a major civil war of ideologies, in this context the claimant is stuck because he is seen as someone who travels, he has come from the West, he is considered as someone working for the Pakistani military, which is fed by the British. Counsel emphasizes that the risk is specific to the claimant because he is a squash player and is Pashtu, the same ethnicity as Taliban/Al-Qaida. Because he has to play squash, which counsel contends is key to his identity, he is famous and will continue to get notoriety in the media. Al-Qaida and the Taliban will find him anywhere in Pakistan to make an example of him so that other children are scared to pursue what he has pursued.

[30] Human Rights Watch noted in its *World Report 2010* (HRW World Report 2010), published on January 20, 2010, covering 2009 events, that:

Pakistan was rocked by a spate of suicide bombings, armed attacks, and killings in 2009 by Taliban and al Qaeda militants and their affiliates that targeted civilians, the political elite of the country, educational institutions, hospitals, marketplaces, and even the visiting Sri Lankan cricket team. The capital, Islamabad, its twin city Rawalpindi, and the provincial capitals of Lahore and Peshawar were repeatedly sites of attacks. Armed groups also continued to recruit and use children, including for suicide attacks.¹⁰

[31] Militant and terrorist bombings in all four provinces and in FATA resulted in hundreds of deaths and thousands of injuries. As of September 5, [2010] according to data collected by the South Asia Terrorism Portal, the media had reported 473 bombings in all four provinces and in FATA that killed more than 1,500 persons and injured 3,500 others. Of these, 49 were suicide attacks that killed 1,100 persons and injured more than 2,100. Such groups, including the TTP, the main Taliban militant umbrella group in the country, targeted civilians, journalists, schools, pro-government community leaders, security forces, and law enforcement agents, killing hundreds and injuring thousands with bombs, suicide attacks, and other forms of violence. Militant and terrorist groups often attacked religious minorities.¹¹

¹⁰ Exhibit 5, National Documentation Package (NDP), Pakistan, 20 April 2011, Item 2.2, United Kingdom. 17 January 2011. Home Office. *Country of Origin Information Report: Pakistan*.

¹¹ NDP, Item 2.1, United States (US). 8 April 2011. Department of State. "Pakistan." *Country Reports on Human Rights Practices for 2010*, page 27.

[32] Notably, there is no mention in the country documentation of any Pakistani or Pashtu squash players, cricket players or other Western sports playing Pashtu specifically being subjected to targeting by Al-Qaida or the Taliban. Aside from the mention of a suicide attack on a volleyball match in January 2010 in the north-west, there is no other information indicating where, when, who was playing the match, potential motives for the attack, etc.¹² Although the claimant points to one article in evidence that he alleges to be the deadly bomb blast in October 2009 that killed his coach's family,¹³ the article itself indicates that it was the police investigation bureau in the Swati Pathak area, which is close to a Pakistani army garrison that was specifically targeted. The article goes on to mention the number of bomb blasts in Peshawar, including market places and mosques, noting that Peshawar, the capital of Pakistan's NWFP, is a strategic city as it occupies a strategic location on the road to the Afghan border and is the gateway to Pakistan's tribal regions that are long regarded as being havens for Islamist militants.

[33] Due to no mention of the squash coach or his family in the news article referenced as the bombing that killed his family, I do not find credible that the bombings targeted the coach or his family.

[34] The claimant provided several news articles from Pakistan on his success as a squash player. According to the translations provided, these articles cover the years from 2002 to 2010,¹⁴ and winnings in Qatar and Manchester, as well as the Pakistani provinces of Baluchistan, Karachi, and the Punjab. The players come from all areas of Pakistan, including the NWF, and many Pakistani players are shown winning awards. The claimant is specifically depicted in the 2005 group photos receiving awards from the army's Chief Air Marshall and Chief of Air Staff, the Prime Minister of Pakistan, and the Manchester Pakistani Consulate General.

[35] The claimant has been an international squash contender and winner since 2002 and has appeared in the media in articles written in Pashtu, Urdu and English since then. The pique of his publicity in terms of his affiliation with the Prime Minister and high-ranking military officials appears to have culminated in 2005 with photos published in the NWFP media. It is noteworthy

¹² NDP Item 2.2, United Kingdom. 17 January 2011. Home Office. *Country of Origin Information Report: Pakistan*.

¹³ Exhibit 3, Item 2.

¹⁴ Exhibit 7, Items C1 to C9; and Exhibit 6, Items 132

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that the claimant never received any harassment or targeting by the Taliban/Al-Qaida prior to his allegations of September 2009.

[36] These extremist groups have been active for a long time with the various militant groups coalescing under the umbrella of Tehrik-i-Taliban Pakistan (TTP) in 2007. Among their other objectives, the TTP announced a defensive jihad against the Pakistani army, enforcement of sharia, and a plan to unite against NATO forces in Afghanistan. According to South Asia Terrorism Portal (SATP), a terrorism database, 2,155 civilians were killed in terrorist violence in 2008 and nearly 1800 civilians were killed in the first ten months of 2009 as compared to around 1600 civilian deaths from 2003 to 2006.¹⁵ They seized control of the Swat Valley in February 2009 when they launched another crackdown over the area.¹⁶

[37] Aside from the allegations laid out in his PIF, the claimant's documentation also does not contain any evidence of squash players being targeted. Had squash players expressly been targeted by Al-Qaida or the Taliban, I would have expected to see some reference to them in the independent documentary evidence. Given the claimant's notoriety, and if he represents a target to the Taliban/Al-Qaida as a means to influence Pashtu youth as put forth by his counsel, I would have expected him and his family and other squash players to have been targeted in an overt manner, and for there to have been evidence of such targeting.

[38] The claimant cites two individuals in his PIF as similarly situated individuals who have been threatened by the Taliban/Al-Qaida because they are squash players: Ms. Maria Toor, the number one Pakistani female champion; and Mr. Nasir Hussain, their coach who was threatened in July 2009 that his and the players' families would be killed if he did not stop coaching them.¹⁷ At the hearing, the claimant testified that Ms. Toor had relocated to another country due to the threats, but he did not know where. From his testimony, she was only threatened to wear a burka. He thought his coach had relocated to the U.K. because he had been threatened and family members had been killed in a suicide blast. Since then the claimant's coach had coached

¹⁵ NDP, Item 4.8, Council on Foreign Relations (CFR). 7 October 2010. Jayshree Bajoria. "Pakistan's New Generation of Terrorists."

¹⁶ NDP Item 2.6, PAK103309.E. 2 November 2009. Situation in the Swat valley; whether the government has control and displaced civilians have returned; status of Taliban insurgents in the Swat valley.

¹⁷ Exhibit 1, para 9, 10 and 11.

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him remotely. Eventually he also cited a third squash player, his friend, Umair Javed, who appears in a poster in evidence with the claimant promoting an exhibition match at the University of Winnipeg.¹⁸

[39] The claimant testified that Umair is also an international squash player, and that they were from the same area, from which they travelled together from the time he left Pakistan, that they were both in England together, that they came to Canada together and they made refugee claims together. He had no explanation as to why Umair making a refugee claim in Canada as a squash player did not appear in his PIF. The claims were not joined by their counsel to be heard together by the Board. Umair's information does not appear anywhere in this claimant's PIF as a similarly situated person, even though they are both claiming refugee protection in Canada for the same reason and their lives and experiences are intertwined: threats against them because of being squash players. They reside in the same city in Canada and continue to play squash together according to the claimant's documentary evidence. Umair was not offered as a witness to this claim. While there is no obligation for counsel to notify the Board of the related claims, due to the interconnectedness between the two claimants and the lack of mention of Umair in the claimant's PIF as a similarly situated person with a refugee claim in Canada, or even his presence as a witness, I take a negative credibility inference.

[40] The claimant testified that he started to fear for his life from the age of six when he began playing squash. However, he returned again and again to Peshawar to go to school. His counsel submits that the re-availments were reasonable because he kept moving from place to place and because he was zealous about his tournaments.

[41] He had multiple and/or long term visas for the U.K, Czech Republic, U.S., and finally Canada. He testified that he asked people in the U.K regarding seeking asylum but that they told him he would not be successful because he was from Pakistan. The person he asked was a random person. He testified that he travelled with his friend Umair in the U.K., but that they did not have any adult supervision for that four month period, and he did not have contact with his coach Nasir despite his testimony that his coach was also in the U.K. at the time. He did not ask about asylum in the U.S. because the U.S. has a bad reputation and because he was told that

¹⁸ Exhibit 6, Item C-9.

since the U.S. was fighting the Taliban he would not be accepted. His intention all along was to claim refugee protection in Canada. Yet, he did not claim refugee protection upon arrival because he was scared and did not like Toronto. It was not until he got to Winnipeg that he made a claim when he asked a taxi driver what to do.

[42] If the claimant feared for his life since the age of six due to his squash playing, I find that his explanations for his frequent returns to Pakistan, and specifically Peshawar, demonstrate a lack of subjective fear. I do not accept his explanations for his re-avaiement to Peshawar. If his life was truly in danger, then, on a balance of probabilities he would not have returned to Peshawar.

[43] If he started to fear for his life in February 2010 because his parents told them they had been visited by the Taliban/Al-Qaida and had been beaten due to his squash playing, then I do not accept his explanations for not claiming asylum in the U.K., a country he frequented over the decade, or the U.S., or immediately upon arrival in Canada. I do not find credible that he was not guided or chaperoned in some way whilst carrying out his competitions in the U.K., especially if his coach remained his coach and allegedly fled Pakistan due to alleged targeting by the Taliban/Al Qaida owing to his having coached the international level squash players. His lack of claim in the U.K. and the U.S. demonstrate a lack of subjective fear.

[44] I note that the claimant's parents have never moved and his siblings, except for one, remain in the same area. Allegedly his parents have never moved because the Taliban told them they would find them anywhere. Other than his allegations that his parents have been threatened and beaten because of him, which I do not find credible, no other siblings have encountered Taliban/Al-Qaida threats.

[45] Considering the totality of the evidence, on a balance of probabilities, I do not find credible that the claimant has been attacked or threatened by the Taliban/Al-Qaida, that his parents have been threatened by the groups, or that the groups have attributed a political opinion to him such that there is a serious possibility that he would be persecuted, or personally face a risk to his life if returned to Pakistan. I acknowledge the evidence that the Taliban and Al-Qaida have increased their suicide attacks on a variety of institutions and public places, but this